



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that the landlords handed him a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on November 2, 2013. The tenant also confirmed that he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on November 15, 2013. I am satisfied that the landlords served the above documents to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy began on July 15, 2013. Monthly rent is set at \$550.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$275.00 security deposit paid on or about July 1, 2013.

The landlords testified that they issued the 10 Day Notice on November 2, 2013 because the tenant had not paid any of his November 2013 rent by that date. The

tenant said that he offered to pay his rent to the landlords on November 5, 2013, but the landlords refused to accept his payment. The landlords both testified that the tenant made no such offer and has not paid anything further to the landlords since they issued the 10 Day Notice. The tenant did not deny the landlords' assertion that he has not paid any rent since October 2013. The landlords' application for a monetary award of \$1,650.00 was for unpaid rent owing for the past three months. The landlords also applied to recover their \$50.00 filing fee for their application.

The tenant testified that he has plans to vacate the rental unit by January 15, 2014. The landlords said that the tenant has been telling them that he had plans to vacate the rental unit by the 15th of each month since November 2013. They asked for an Order of Possession to take effect before the 15th of January 15, 2014.

The tenant also voiced a number of objections to the conditions of the tenancy and the rental unit, maintaining that the landlords have not taken proper care of the rental property. Although he said that he intended to take the landlords to Small Claims Court, the tenant confirmed that he has not taken any action to obtain a reduction in his rent, to contest the landlords' 10 Day Notice, or to obtain an order from an Arbitrator to allow him to withhold any portion of his monthly rent.

Analysis

Although the tenant said that he attempted to pay his November 2013 rent a few days after the landlords issued their 10 Day Notice, the landlords disputed this testimony. The tenant also confirmed that he has not paid anything towards this tenancy since the landlords issued their 10 Day Notice. Under these circumstances and on a balance of probabilities, I find it more likely than not that the tenant failed to pay the November 2013 rent in full within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 13, 2013. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the undisputed sworn testimony of the parties, I find that the tenant continues to owe the landlords \$550.00 for each of November and December 2013, and January 2014. I issue a monetary Order in the landlords' favour in the amount of \$1,650.00 to compensate the landlords for their loss of rent over this period. As the landlords have

been successful in their application, I allow the landlords to recover their \$50.00 filing fee from the tenant.

In accordance with section 72 of the *Act*, I order the landlords to retain the tenant's \$275.00 security deposit plus applicable interest to partially offset the monetary award issued in this decision. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent owing for this tenancy and their filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid November 2013 Rent	\$550.00
Unpaid December 2013 Rent	550.00
Unpaid January 2014 Rent	550.00
Less Security Deposit	-275.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,425.00

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 08, 2014

Residential Tenancy Branch

